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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. Nos. 8 & 9 of 1990

Date of decision:11.1.2007

Shri Kishore Lal L/H of late Shri Ram Rattan Doraha

...Petitioner

Versus

The Commissioner of Income-Tax, (Central), Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Mukhi, Advocate for the assessee.

Mr.S.K.Garg Narwana, Advocate for the revenue.

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RAJESH BINDAL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandgiarh (for short 'the Tribunal) arising out of its order dated 29.4.1988 passed in I.T.A.Nos.632 & 633 of 1985, in respect of the assessment year 1978-79:-

1. Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the estimate filed by the assessee on 15.3.1978 of the total income and the advance tax payable could not be taken cognizance of and as such was not in accordance with the result penalty under Section 273(c) was leviable upon the assessee?

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Facts as recorded in the statement of the case are as under:-

"In both the cases, the Income-tax Officer demand advance-tax under section 156 read with section 210 of the Act payable during the financial year 1977-78 relevant to the assessment year 1978-79. By virtue of the provisions of section 211 (1) (ii), the advance-tax was payable in three equal installments on 15th September, 15th December, 1977 and 15th March, 1978. Section 212 (3A) provides that in the case of any assessee who is required to pay advance-tax by an order under section 210 if, by reasons of the current income being likely to be greater than the income on which the advance tax payable by him under section 210 has been computed or for any other reason, the amount of advance-tax computed in the manner laid down in section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance-tax demanded from him under section 210 by more than 33.1/3% of the latter amount, he shall at any time before the date on which last installment of advance-tax is due from him, send to the Income-tax Officer an estimate of the current income and the advance-tax payable by him on the current income calculated in the manner laid down in section 209 and shall pay such amount of advance-tax as accords with his estimate on such of the dates applicable in his case under section 211 as have not expired, by installments which may be revised according to sub-section (2). As noted above, the last of the installments was payable on 15th March, 1978 by virtue of Section 212(3A). Upward estimate of the current income and the advance-tax payable thereon by the assessee is required to be filed before the last date i.e. 14th March, 1978 as per the Income tax Officer. The assessee filed the estimates of current income and advance-tax as required under section 212(3A) of the Act on 15th March, 1978. The Income-tax Officer held that the

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estimates having been filed beyond the time prescribed under the Act were invalid and, therefore, these were no estimates in the eyes of law. He, therefore, initiated penalty proceedings under section 273(c) of the Act which provides that if the Income tax Officer in the course of any proceedings in connection with regular assessment for any assessment year is satisfied that any assessee has without reasonable cause failed to furnish an estimate of advance-tax payable by him in accordance with the provisions of Section 212(3A) of the Act, he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty which shall not be less than 10% but shall not exceed 1½ times of 75% of the assessed tax as reduced by the advance-tax demanded under section 210."

Accordingly, penalty under Section 273(2)(c) of the Act was levied on the assessee. In appeal against the order of penalty before the Commissioner of Income Tax (Appeals), Ludhiana (for short 'the CIT(A)'), the assessee succeeded wherein CIT(A) held that mere delay of one day in filing the estimate of advance tax was not deliberate but was beyond the control of the assessee. However, the Tribunal reversed the view taken by the CIT(A).

After hearing learned counsel for the parties, we find substance in the contention raised by the learned counsel for the assessee that for mere delay of one day in filing the estimate of advance tax, the assessee could not be punished with levy of such a harsh penalty. The reasons for delay of one day was totally beyond the control of the assessee as his main source of income was share from M/S Nav Bharat Banaspati & Allied Industries, Doraha and filing of estimate of advance tax was dependent upon the intimation by the said firm. Still further he submitted that the assessee was not to gain anything by filing the estimate by delay of one day only rather the error was committed as the period was considered as on or before 15th of the month instead of before 15th of the month. In such

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situation, the estimate of advance tax filed by the assessee could not be declared to be invalid. Once a reasonable explanation is available and levy of penalty during the relevant period was envisaged in the absence of reasonable explanation, in our view, there was no justification for levy of penalty for mere technical default when the delay was merely of a day.

The question referred, thus, is answered in favour of the assessee and against the revenue.

The reference is disposed of, accordingly.

(Rajesh Bindal)
Judge

January 11 ,2007 **(M.M.Kumar)**
Pka **Judge**